E & P.H. (194 9) Department.

SERIES.

G.O. NO. 2102 P.H.

Dated 10th June 1949

[Despatch Abstract.]

Building Rules - Udipi Municipality - Door No.1241/III Calcellation of resolution of the Council - Orders passed.

R.1440

R.O.C. No.C1-4975/48.

Municipal office,
Dated 4-12-1948

From

Sri V. Balagangadharan, B.A.,(Hons.)
Municipal Commissioner, Udipi.

To

The Secretary to Government,
L.A., Department, Madras.

Through,
The Director of Twon Planning, Madras.
The Inspector of Local Borads, Madras and
The Chairman, Municipal Council, Udipi.

15832

R.5

Sir,

Sub:-License - building - Door No.1241/III- granting of license by the Council - cancellation of the resolution of the Council - requested.

Ref:-License granted to Sri K. Shesha Bhandary as per R. Dis. No.1661/48 dated 14-6-48.
2) L.Dis. 3424/48 dated 4-11-48 of the Director of Town Planning, Madras.

B3

Sri K. Shesha Bhandary s/o Korga Bhandary Retired Postman put up without applying for a license a parapet wall over the front verandah of his building Door No.1241/III to a height of about 2 ft. and a wooden lattice enclosure over that enclosing the said verandah. A notice under section 317 of the Madras District Municipalities Act was issued calling upon him to show cause as to why he should not be prosecuted for the unauthorised execution of the work. In reply to the notice he submitted in a petition dated 8-3-48, that the wooden lattice enclosure existed before and that, as it was eaten ~~by the~~ away by white ants, he had only replaced it by a new wooden railin

P3 (T)

2. The building in question abuts on a 20 feet wide road margin of a road 23 feet wide with a 3 ft. wide drain between them. The work executed was considered to have violated, the provisions of rule 9 (2) of the Revised Building Rules. He was therefore directed to remove the unauthorised enclosure in this office proceedings R.O.C. No.C1-1661/48 dated 18-3-48 on pain of prosecution. On this order of the Commissioner, Sri K. Shesha Bhandary filed on 23-3-1948 an appeal to the Council. The Council considered the appeal ~~in~~ two of its meetings held on 30-3-48 and 19-4-48 and allowed the appeal at its meeting held on 27-4-48. In view of this decision of the Council a license was granted to the said Sri K. Shesha Bhandary in this office R. Dis. No.1661/48 dated 14-6-1948.

3. On the report of the Deputy Inspector of ~~the~~ Municipal Councils and Local Boards in the course of his Annual Inspection notes regarding the grant of this license, the Director of Twon Planning called for the records. On examining the papers, the Director of Town Planning in his L.Dis. No.3424/48 dated 4-11-48 consider that resolution of the Council allowing the appeal of th party was "ultravires". He has also asked me to addres the Government to cancel the resolution of the Council and on obtaining the orders from Government to revoke th license granted to the objectionable construction.

4. I request that the Government may be pleased consider the matter and issue such orders as considere necessary on this matter.

This office file R. Dis. No.1661/48 is submi

Commissioner

Please see next page Forwarded,

Office of the Inspector of
Ml. Cls + Ll Bds Madras

Dis 5783-28/48 d 25-12-48

Forwarded

25/12

for Inspector

29
20/12

S.
28/12

To
The Director of Town planning
Madras

T.P.A.1 (Gr) for
immediate
action

Rams
3/1/49

W
I got

It is really unfortunate that the Director of Town Plan should have considered it unnecessary to obtain the views of the council before he made a unilateral declaration that the council's resolution interpreting the work as only repairs is "untenable". It is still more unfortunate that he should hold the grant of license to the party on the basis of the council's resolution as "ultravires" and advised the Commissioner to address the Government to cancel the resolution of the council, to revoke the licence and then take action against the party after obtaining the orders from Government. No greater insult can be thrown against a responsible democratic body than the advice given by the Director to the Commissioner. Although I am aware that the Government would not cancel the resolution unles the council is asked to show cause as to why its resolution should not be cancelled, I feel I should cease to represent the council as its Chairman if I do not interpret its decisions.

3. The council did not allow the appeal at its very first meeting without discussing every aspect of the case and without inspecting the work executed by the appeallant . The appeal came up before the council at its meetings held on 30-3-1948, 19-4-1948 and 27-4-1948. The appeal was allowed only at the meeting held on 27-4-1948 for the following reasons:-

(a) That the wooden railing put up by the appeallant over a parapet wall was in replacement of the old railing eaten away by white ants.

(b) That the replacement could not be taken as objectionable construction, that it could at the most be a" reconstruction" as defined in section 3(24) of the Madras District Municipalities Act, if not repairs, that therefore Rule 9(2) was inapplicable in this case in view of Rule 9(1).

(c) That the Building was and still is partly a shop and part dwelling house.

(d) That enclosing the four feet verandah attached to the building in front with a wooden lattice work or railing in -- substitution of the old one could not amount to the conversion of the verandah into a room or to conversion of the building not originally constructed as a dwelling house into a dwelling house.

(e) That the use of the building for dwelling purposes in ~~the~~ these days of acute shortage of housing facilities in the town could not at any stretch of imagination be taken to mean that the building was converted into a dwelling house coming within the ~~mischief~~ meaning of the building rules.

(f) That ~~the~~ for these reasons the council came to the -- conclusion that Rule 9(2) was misapplied in this case and allowed the appeal.

All this unhappy correspondence could have been avoided if the Deputy Inspector, who inspected the Municipality had discussed this matter with me and ascertained the reasons -- which weighed with the council in allowing the appeal before he opined in his notes of inspection that" the council should not have allowed the appeal and disposed it off favourably to the party etc." It is significant that the ~~Director~~ Deputy Inspector based his opinion on the note of the Public Works Supervisor dated 13-4-1948 which was put up after the appeal was heard and discussed by the council at its meeting held on 30-3-1948 without a request or direction from the council. While I may concede that the municipal officials are entitled to express their opinion, I am unable to concede that the council is not entitled to hold a different opinion than the one expressed by its officials in the matter of application of the rules, expecially when unsolicited opinions are ex-- pressed when a matter ~~k~~ is subjudice. In the circumstances the council is in my opinion justified in ignoring the note the Public Works Supervisor dated 13-4-1948, as the council ~~ix~~ believed that his note was intended to support the stand taken by him previously, if not to prejudice the council's decision. I regret very much that both the Deputy Inspec and the Director of Town Planning failed to take a note of material fact.

There is therefore absolutely no case for the cancellation of the licence. I have no doubt that the Government, representing as they do the popular opinion, will view this case dispassionately and decline to interfere with the decision of the council.

CHAIRMAN,
Municipal Council,Udipi

N.Dis.48/49.

Office of the Director of Town Planning,
Old High Court Buildings, Ist Line Beach,
Madras.1. Dated 12-2-1949.

Sub: BUILDING RULES - Udipi Municipality - Door No.1241/III - Granting of license by the council - Cancellation of the resolution of the Council - Remarks furnished. Plante

1[illegible] FEB 1949

Ref: From the Commissioner, Udipi Municipality Roc.No.C1-4975-48 dated 4-12-48 to Government through the Director of Town Planning.

Forwarded to Government.

11642

The Construction by the party of a parapet wall and a lattice enclosure at the outer edge of his verandah abutting the street, thus converting the open verandah into a room, is to be deemed to be a building under the definition of the term prescribed in Section 3(3) of the Madras District Municipalities Act and in as much as the said construction falls within the front 4 feet space, it has to be deemed as violating rule 9(2)(a) of the building rules. In these circumstances the appeal of the party allowed by the Council and the subsequent permission granted by the Executive Authority on the strength of the council resolution have both been contrary to law and in excess of the powers of the authorities concerned. Government may therefore be pleased to cancel the resolution of the Municipal Council and then call upon the Executive Authority to revoke the permission granted by him already under Section 197 of the Madras District Municipalities Act and direct that the party may if he so chooses apply to the Director of Town Plannin for exempting the structure put up by him from the operation of the building rules.

P3(T)

"M"

14.2.49

For Director of Town Planning.

14.2
12.2.49

To the Secretary to Government, Education and Public Health Department,
Fort St. George, Madras.

s.n.12-2

Edn. & P.H.(F2) Deptt.

Memo. 11642/49-2 [illegible] 31.3.49

Building Rules - Udipi Municipality - Door No.1241/III - Granting of license by the council - Cancellation of the Resolution of the Council -

-----

From the Commissioner, Udipi Municipality, Roc.C1-4975-48. dated 4.12.48.
From the D.T.P., N.Dis.48/49. dated 12.2.49.

-----

p1 ef
p7 ef
p3 ref
p3 ef
pp1-5 ef
p3 ref

The Govt. do not consider that in this case the Municipal Council, Udipi has acted in excess of its powers. The reasons set out in paragraph 3 of the Chairman's remarks forwarded with the letter from the Commissioner, Udipi Municipality, Roc.C1-4975/48 dated 4.12.48 are substantial and should not be lightly brushed aside. The question whether there was already a trellis and whether the appellant merely repaired and replaced it is one of fact. Evidently the appellant satisfied the Council that there was already a trellis in existence and it cannot be said that the Municipal Council has taken a perverse view and acted in bad faith. Rule 9 (of the Building Rules) will apply only:-

(1) to cases of newly constructed buildings;

(2) to the conversion into dwelling house of a building not originally constructed as a dwelling house; and (3) to additions made to existing buildings which ~~have~~ have the effect of diminishing the open space to an extent less than that required by the sub-rules. The case in question does not ~~seem to~~ come within item (I), and item (2) also appears to be inapplicable in view of the statement of the Chairman, that the building was and still is partly a shop and partly a dwelling house. Nor can it be contended that the case is covered by item (3) as the verandah cannot be said to be an open space and there is no question of the open space being diminished now. In the circumstances, it does not appear that there is sufficient material on which action under section 36(1) of the M.D.M. Act can be taken. The D.T.P. is requested ~~to justify his proposal for Govt. to take action under section 36(1) of the M.D.M. Act in this case.~~ to offer further remarks if any.

para 3(c) on p3 c.7
p3 ref

To

The D.T.P.
~~Copy to the Commr., Udipi Municipality.~~
~~through~~ (with enclosures to be returned with reply)
(L) & Sket: [illegible]
p7 C.7

26.3.49

R.O.C. No.C1-4975/48.

Municipal Office, Udipi,
Dated: 28--2--1949.

From

Sri V. Balagangadharan, B.A.,(Hons)
Municipal Commissioner,
Udipi.

To
The Secretary to Government,
L.A., Department, Madras.
Thro' the Chairman, Municipal
Council, Udipi.

8 - MAR 1949
9535

B5

M 3/3

****

Sir,

Sub: LICENSE - Building - Door No.1241/III - granting of license by the council - cancellation of the Resolution of the Council - requested.

Ref: This office R.O.C. No.C1-4975/48 dated 4-12-48 and dated 17--1--1949. (Reminder kept below) pl ante.

.......:oOo:.......

I request that the Government may be pleased to pass early orders on this office R.O.C. No.C1-4975/48 dated 4-12-48 submitted through the Inspector of Loacl Boards and the Director of Town Planning Madras.

Lank

A

Commissioner.
28/2
28-2-49

Forwarded,

Chairman,
Municipal Council Udipi.
28-2-49

KMR/P.28.2.

MUNICIPAL OFFICE

1602

Local Administration
Department.

Endorsement No. 9535/49-1A dated 7/3/'49

Returned for resubmission through the Inspector of Municipal councils and Local Boards and the Director of Town Planning through whom the original reference was submitted.

(By order)

Assistant Secretary to Govt.

Mp
4/3/'49

10/3/49

To
The Commissioner
Udipi Municipality
Through the chairman of
the Municipal council.

Ro.c. No. e1. 4975/48.

Resubmitted through the Inspector of Municipal Councils and Local Boards and the Director of Town Planning, Madras

1-2 MAR 1949
MADRAS

11/3/49
Commissioner, U.M.
11-3-49

07 APR 1949

He. X.N.Dis.
Rem 26/3.

Office of the Director of Town Planning Madras

Forwarded in continuation of this office N.Dis. 48/49 D 12.2.49 ~~[illegible]~~ (p 7 ante)

R. M. [illegible]
5-4-49.
For Director of Town Planning

26988

To
The Secretary to Govt ~~[illegible]~~
E & P H Dept.
Madras

3/4.49

4/4/49

C. no: 11642/49.

ELPHE(B)

Building Rules - Udipi Mplty - Door no: 12 41/III - Granting of licence by the Council Cancellation of the resolution of the Council.

From the Commissioner, Udipi Municipality Roc. No. C1 - 4975/48 d) 28-2-49

Memo: 11642/49-3 F2 Dated 20.4.49

100
20/4
p 11 ante

The matter is under consideration.

14/4/49
18.4.49

19-4-49

To
The Commr, Udipi Mplty
(through the Colr)

21/4

N.C.: Please see the letter from the Commr, Udipi Mplty at p 11 ante. He may be informed that the matter is under consideration - The reply to the memo at p 9 cf may be awaited till 15.5.'49.

KN
14/4/49

18.4.49

19/4/49

From
K.M. Unnithan Esq., I.C.S.,
Director of Town Planning,
Old High Court Buildings,
Madras.1.

To
The Secretary to Government,
Education and Public Health Department
Fort St. George,
MADRAS.

-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-X-

L.Dis. No. 1760/49 Dated 27-4-1949.

Sir,

ASST. SECRETARY TO GOVERNMENT
29 APR 1949
2755
EDUCATION AND PUBLIC HEALTH DEPT.

Sub: RULES - Building Rules - Udipi Municipality -Door No.1241/
Granting of licence by the Council - Cancellation of the resolution of the Council - Remarks.

Ref: Education and Public Health Memo.No.11642/49-2-F2 P.H. dated 31-3-49.
p 9 ante

The enclosures forwarded with the above memorandum are returned with the following remarks.

If, as contended by the Chairman and the Council, there was trellis work which was repaired by the party, it does not appear that rule 9(2) of the Building Rules will be applicable to the case, and Government may not take action under Section 36(1) of the Madras District Municipalities Act.

FOR DIRECTOR OF TOWN PLANNING. 28/4/49

S.N.28-4

28/4 28.4.49

R. no: 11642/49. [illegible]

Building Rules - Udipi Mplty - Door No: 1241/III - Cancellation of the resolution of the Council - Orders passed -

p1 cf — From the Commissioner, Udipi Mplty.
R.C. No. G - 4975/48 d 4-12-48

11/6

p7 cf — From the Director of Town Planning
N Dis: 48/49 d 12-2-49

p9 cf — Govt memo: 11642/49-2 PH d 21-3-49

p17 cf/D — From the Director of Town Planning
L Dis: 1760/49 d 27-4-49

Order. 2102 (PH) 10.6.49

Ms

para 4, p5 nf — The Commissioner, Udipi Mplty is informed that the Government decline to interfere with the decision contained in the resolution

ibid — of the municipal Council, Udipi. No: 13 d 27-4-48, in which it has allowed the

ibid — appeal petition of Sri. K. Sesha Bhandary

To
The Commissioner, Udipi Mplty
(through the CMC)
The D.T.P.
S/c.

14/6

KA
3/6/49
7.6.49

8/6/49

P1 c.f. From the Commr., Udipi Mty, Roc. No: C1-4975-48 dated 4-12-48
P7 c.f. From the D.T.P. N.Dis. 48/49 dated 12-2-49.

Building Rules - Udipi Municipality - Permission for construction of a room - Cancellation of council's resolution.

P1 c.f. 1 One Sri. K. Shesha Bhandary put up a parapet wall (2 feet high) over the front verandah of his house in Udipi and a wooden lattice enclosure over the parapet wall without applying for the necessary ~~licence~~ (permission). A notice under
P3 (L) section 317 of the M.D.M. Act (asking him) to show cause why he should not be prosecuted for the unauthorised construction) was issued to the party and in reply to that notice the party stated that an enclosure
P11 (L) of cadjan leave thattis and an old lattice work already existed (at the place) ~~[illegible]~~ and that he had only replaced it by a wooden lattice work. The Municipal P.W. Supervisor who inspected the building
P19 (L) reported that the verandah which was open was previously enclosed with cadjan thattis but that there was no old lattice work as stated by the party, and that the building which was originally designed for ~~[illegible]~~ a shop building had been converted into a residential building.

p1 c.f. 2 The building abuts a road, 20 feet wide and there is a 3 feet wide drain in the space intervening between the road and the house. As the new construction
P3 (T) violated rule 9(2) of the Building Rules, the Municipal
PR9-10 (L) Commissioner directed the party to remove the unauthorised construction. Sri. Shesha Bhandary submitted an appeal petition to the council against the orders of the Commissioner
P25 (L) and the council allowed the appeal. In pursuance of the council's resolution allowing the appeal, the Commissioner issued the necessary
P1 c.f. ~~licence~~ permission to the party. On a report from the Deputy Inspector of Municipal Councils & Local Boards, the D.T.P. informed
P1 c.f. the Commissioner that the resolution of the council allowing the appeal was ultra vires and that ~~[illegible]~~ Govt should be addressed to cancel the resolution of the council. The Commissioner
Ind. now requests ~~[illegible]~~ orders of Govt in the matter.

1 C3-4 c.f. 3 While forwarding the reference to Govt the Municipal Chairman has remarked that for the reasons stated at 'A' on ~~[illegible]~~ page 3 c.f., Govt may decline to interfere with

with the decision of the council.

4 The D. T. P. remarks that conversion of the pen verandah into a room is to be deemed to be a uilding under the definition of the term in section 3 (3) of the D. M. Act, and that the construction in question falls ithin the 4 feet open space required to be provided under ~~it violates~~ rule 9(2)(a) of the Building ules. The Director recommends that Govt. may cancel the esolution of the council, call upon the Commissioner to revoke e permission granted by him and direct the party, if he so hoses, to apply to the D. T. P. for exempting the construction from e operation of Building Rules

P 7 c f.

Ibid

5 In view of the report of the P. W. Supervisor t page 19 of Ⓛ, the statement of the party that a lattice work already existed previously at the place seems to be incorrect. The onstruction violates rule 9(2)(a) of the Building Rules and herefore the action of the council in allowing the appeal ~~ultra vires. It is for orders whether the recommendation of the D. T. P. may be accepted. Therefore the action of the council in allowing the appeal~~ amounts to exempting the building from the operation of rule 9(2)(a). The power to grant exemption rom Building Rules vests ~~only~~ in the Govt and this power has been delegated only to D. T. P. The action of the council in allowing the appeal is therefore ultra vires and in excess of its powers. The Council may therefore be asked under section 36(1) of the M. D. M. Act to show cause why the resolution should not be cancelled. Once the resolution is cancelled, it seems to amount to a cancellation of the permission granted to the party and there seems to be no need to ask the Executive Authority to revoke the permission as suggested by the T. P. It is, of course, open to the party to appeal the D. T. P. again after the resolution is cancelled.

A

M on p 7c.7

M on p 7c.7

Legal may see with reference to 'A' above before e council is called upon to show cause why its

U.O. 11642 Fr/49-1.P.H.
12-3-49

2997
D

ASSISTANT SECRETARY
14 MAR 1949
LEGAL DEPARTMENT

LEGAL DEPARTMENT.

It does not appear that it can be said in this case that the Municipal Council has acted in excess of its powers. The reasons set out at A on p.3, c.f., are substantial and should not be lightly brushed aside. The question whether there was already a trellis and whether the appellant merely repaired and replaced it is one of fact. Evidently the appellant satisfied the Council that there was already a trellis in existence and it cannot be said that the Municipal Council has taken a perverse view and acted in bad faith. Rule 9 will apply only— (1) to cases of newly constructed buildings, (2) to the conversion into dwelling house of a building not originally constructed as a dwelling house, and (3) to additions made to existing buildings which have the effect of diminishing the open space to an extent less than that required by the sub-rules. The present case does not come within item (1). Item (2) also appears to be inapplicable in view of the statement of the Chairman, that the building was and still is partly a shop and partly a dwelling house. Nor can it be contended that the case is covered by item (3) as the verandah cannot be said to be an open space and there is no ~~xx~~ question of the open space being diminished now. In the circumstances, it does not appear that there is sufficient material on which action under Sec.36 (1) of the Madras District Municipalities Act, 1920, can be taken.

B

Legal 2997/49
17/3/49.

17.3.49 E & P.H

E & PH

~~E & P.H (G)~~

~~Please see the notes at pages 1-3 above.~~

21332
18 MAR 1949

B(PH(B))

With reference to the Legal note at p3 ante draft memo to the D.T.P is submitted

KA 6/8/49
26-7-...

m
29-3-49

JS 31/3

[Issued as memo: 11642/49-2 B.PH.(B) 31-3-49] — pp 15 16 c.f
[From the Director of Town Planning L.Dis. No. 1760/49 dt 27-4-49] — p 17 cf.

Summarising Note for Circulation.

One Sri. K. Sesha Bhandary put up — p 1 ante
a parapet wall (2 feet high) over the front
verandah of his house in Udipi and a wooden — ibid
lattice enclosure over the parapet wall without
applying for the necessary permission. A notice under — ibid
section 317 of the M.D.M Act asking him to show
cause why he should not be prosecuted for the
unauthorised construction was issued to the party by the Commissioner
and in reply to that notice the party ~~had~~ stated — ibid
that an enclosure of cadjan leave thattis and
an old lattice work already existed ~~and~~ at the
place and that he had only replaced it by a
wooden lattice work. The Municipal P.W. Supervisor — ibid
who inspected the building reported that the verandah
which was open, was previously enclosed with
cadjan ~~thattis~~ but that there was no old lattice
work as stated by the party, and that the building — ibid
which was originally designed for a shop building
had been converted into a residential building.

2 The building abuts a road, 20 feet — p 1 ante
wide and there is a 3 feet wide drain in the — ibid
space intervening between the road and the
house. As the new construction violated rule — ibid
9(2) of the Building Rules, the Municipal
Commr. directed the party to remove the
unauthorised construction. Sri. Sesha Bhandary

submitted an appeal petition to the Council against the orders of the Commissioner and the Council allowed the appeal in the circumstances explained by the Chairman at 'A' on p3 of Gr. a report from the Deputy Inspector of Ml Cls and Local Bds, the DTP ~~was~~ informed ~~that~~, the Commr. that the resolution of the Council allowing the appeal was ultravires and that the Govt should be addressed to cancel the resolution of the Council (under Section 36 of the M.D.M. Act). The Commr. has requested the orders of the Govt in the matter.

3 In the circumstances stated at p3 ante, the Legal Dept hold the view ~~that it does not appear~~ that there is sufficient material on which action under Section 36(1) of the MDM Act can be taken. In memo: 11642/LS-2A-PH-d) 31.3.49, the D.TP was apprised of the remarks of the Legal Dept and he was asked to offer his ~~own~~ further remarks, if any. In reply the Director ~~he~~ has stated that if as contended by the Chairman and the Council there was a trellis work which was repaired by the party, it does not appear that rule 9(2) of the ~~Bg R~~ Building Rules ~~[illegible]~~ is applicable in the present case and that the Govt need not take action under Section 36(1) of the MDM Act.

4 The Commr. may be informed that the Govt decline to interfere with the decision contained in the resolution of the Ml Cl No. 13 dated 27-4-48, in which it has allowed the appeal petition of Sri K. Shesha Bhandary.

5. The file may be circulated to HM (Edn), HM (LA) and HM (Prohibition).

JKA 7/5/49

11-5-49

f. 10.5.49 May agree as at A

12/5

H.M. (Edn) 14/5

H.M. (Proh)

H.M. (LA

EAPH(A)

Please see the orders in circulation

overleaf A draft order is submitted.

3/6/49

9.6.49

8/6/49